

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JACK ZIMMERMAN,

Petitioner,

v.

WARDEN SHANNON D. WITHERS,

Respondent.

CAUSE NO. 3:22-CV-11-CWR-FKB

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is Magistrate Judge F. Keith Ball's Report and Recommendation ("R&R"), Docket No. 45, which recommends that Jack Zimmerman's ("Petitioner") Petition for Writ of Habeas Corpus, Docket No. 1, be dismissed. Also before the Court is the Petitioner's fourth motion to appoint counsel. Docket No. 48. Having reviewed the R&R *de novo* and having carefully considered the submissions of the parties and the law, the Court adopts the R&R as the opinion of the Court and again denies the motion to appoint counsel.

The Petitioner is a 71-year-old male who is currently incarcerated at FCC-Yazoo City. Docket No. 1. Thirteen years ago, a judge in the Northern District of Texas sentenced him to 360 months imprisonment and a lifetime of supervised release for child enticement and production of child pornography. *See United States v. Zimmerman*, 3:10-CR-00027-B-1 (N.D. Tex. Feb. 10, 2010) (explaining the circumstances of the Petitioner's guilty plea). His projected release date is set at August 28, 2035. He seeks to shorten that time by way of this Petition for a Writ of Habeas Corpus.

In this Petition, Zimmerman alleges that his terminal health issues place him at severe risk of contracting COVID-19 at FCC-Yazoo City. In addition, he argues that these risks, taken together with the “inhumane conditions” at the prison facility, constitute a violation of his Eighth Amendment rights. Docket No. 1 at 6. As a result, the Petitioner submits that he should be released to home confinement to serve out the remainder of his sentence. *Id.*

Warden Withers disagrees. She argues that the Petition should be denied because (1) habeas is not the proper vehicle to challenge conditions of confinement, and (2) Petitioner has not pled an Eighth Amendment violation. Docket No. 40 at 4, 7. On January 23, 2023, United States Magistrate Judge F. Keith Ball accepted the Warden’s arguments and recommended that Zimmerman’s § 2241 Petition be dismissed for lack of subject matter jurisdiction. Docket No. 45. Petitioner timely objected, reasserting the same arguments that served as the basis for his Petition, *see* Docket No. 47, and again moving to appoint counsel, Docket No. 48.

Having reviewed the R&R and the relevant law, the Court concludes that dismissal of the Petition is appropriate for the reasons given in the R&R. The R&R is therefore adopted as this Court’s own Order, and this case is **DISMISSED** without prejudice.

Additionally, for the reasons stated in Magistrate Judge Ball’s July 7, 2022 Order, Docket No. 33, the motion to appoint counsel is again **DENIED**.

A separate final judgment shall issue this day.

SO ORDERED, this the 8th day of February, 2023.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE